

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 ) MB Docket No. 05-  
311  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

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**RESPONSE OF THE BIRMINGHAM AREA CABLE AUTHORITY TO THE  
REPLY COMMENTS OF AT&T INC.**

These Comments are filed by the Birmingham Area Cable Authority, (BACB) in response to the comments filed by AT&T Inc. The Birmingham Area Cable Authority vehemently denies the blatant mischaracterization of the truth in relation to its allegation that the BACB demanded Ameritech New Media to pay Franchise Fees in excess of 5-percent. The BACB can only surmise that the false and baseless claim by AT&T Inc. is an attempt by AT&T Inc. to prejudice these proceedings, and bias this Commission in favor of AT&T Inc's. attempt to create new legislation and erode local control.

**Appendix C To Reply Comments of AT&T Inc.**

Section I. Recent Experience of Competitive Wireline Entrants, Sub-paragraph B., titled Demands for Fees in Excess of 5-Percent Franchise Fee, contained on page 6 of AT&T's Appendix C, at item 63 is completely fictitious.

Approximately seven (7) years ago, Ameritech New Media (ANM) informally approached the BACB during one of its regular meetings. Steven Wells, an attorney representing ANM asked to address the Board, which he was allowed to do. At this public meeting, Mr. Wells stated that ANM was interested in obtaining a franchise agreement from some of the communities represented by the BACB.

As previously stated in our earlier Comments to the FCC, the Birmingham Area Cable Authority is a consortium of four (4) municipalities, consisting of the City of Birmingham, Village of Bingham Farms, Village of Beverly Hills and the Village of Franklin, Michigan. The BACB is a creation of the Cable Act found at 47 USC §521 et seq. and is authorized by Article VII, Section 28 of the Michigan

Constitution of 1963 and the Urban Cooperation Act of 1967, M.C.L.A. §124.501 et seq.; MSA §5.4088. Our incumbent cable provider is Comcast Cablevision of the South, Inc. Our community has negotiated cable franchises since March 8, 1982.

### **Ameritech New Media Never Sought a Franchise Agreement**

While ANM did appear at one BACB board meeting and expressed interest in considering a franchise agreement with one of the four BACB communities, they never asked or requested a franchise agreement. ANM never sent a letter, never sent a draft franchise agreement, and never even discussed this matter with the BACB after their brief and informal statements at the one board meeting that they attended. In fact, after Mr. Wells appeared at the board meeting, neither he nor ANM were ever heard from again.

### **Ameritech New Media Sought to Discriminate**

The franchise agreement in effect at the time (as well as the current agreement) requires that the cable operator currently provide service to the entire area of our communities represented by the BACB. The franchise states that the operator shall provide cable services to any and all persons requesting same at any residential location within the Authorized Area, subject to any applicable line extension charge and the ability, after diligent effort, to access private property not owned by the person requesting the service.

However, that was not what ANM had in mind. Instead, ANM sought to engage in nefarious discrimination as to whom they would and would not serve. This blatant attempt to pit one neighbor against the other was unequivocally admitted by Mr. Wells when he clearly stated that ANM only sought to serve Birmingham and *possibly* Beverly Hills. ANM admitted that they wanted to intentionally discriminate against the citizens of the Village of Franklin and Bingham Farms.

The Cable Act at 47 USC 521 at sub-section (2) indicates that the purpose of the Cable Act is to “establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community”. Id. Furthermore, The Cable Act requires:

(3) In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

The BACB was not willing to allow ANM to violate the Act and discriminate against three entire communities. Such insidious conduct is not responsive to the needs and interests of the local community, as required by the Act. One thing is abundantly clear, however, and that is the effort of AT&T in pushing this legislation eroding local control reveals the fact that they want to discriminate between classes of people. The BACB finds the practice of discrimination abhorrent.

### **ANM Was Asked To Comply With The Cable Act Regarding Franchise Fees**

The BACB never requested or demanded that ANM pay franchise fees in the amount of 10%. The BACB did, however, tell Mr. Wells that the incumbent provider was paying the statutory franchise fee, and that all other providers seeking a franchise would need to comply with the requirements of the Cable Act.

What AT&T has forgotten is that ANM stated at their lone appearance at the board meeting of the BACB was that they would pay the statutorily required 5% franchise fee to the BACB. It is incredulous that AT&T now comes before this Honorable Commission and attempts to tarnish the record by falsehoods.

Our franchise requires the incumbent cable operator to pay a franchise fee to the BACB in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. Section 542(b) of the Act sets forth the amount of fees a franchising authority or municipality may require a cable provider to pay. Section 542(b) states, in pertinent part, as follows:

#### **(b) Amount of fees per annum**

For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services.

AT&T wants this Honorable Commission to believe that the BACB, consisting of four municipalities, would allow its attorney to counsel them to blatantly and openly violate the Cable Act, and subject it to litigation. Moreover, ANM never returned to the BACB, never proposed a draft franchise agreement with a lower proposed franchise fee, and they literally disappeared from existence when it sold itself. Therefore, there were never any demands or negotiations with ANM other than to advise them that the incumbent provider was paying 5%, and ANM's own offer to pay that same amount, consistent with the Act.

## **Financial Support For PEG**

AT&T alleges that the BACB demanded an additional 5% in other public benefits in order to receive a franchise agreement. This is categorically false!

As mentioned above, the BACB never had the opportunity to ask or demand anything from ANM, as ANM never applied for a franchise agreement, nor did they ever negotiate or even communicate with the BACB after their drive-by appearance at one board meeting. Therefore, the BACB never demanded or requested any amount of money or “other public benefits”.

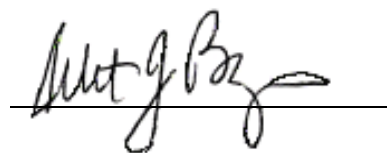
If AT&T is referencing financial support for Public, Educational or Governmental channel capacity, then their allegation is still false. At their single appearance before the board, ANM was merely advised that the incumbent operator financially supports BACB PEG channels with 3% of their gross revenues. Our franchise requires that our PEG channels be supported by the cable operator through an annual grant to the BACB in an amount equivalent to three (3%) Percent of its annual Gross Revenues. ANM stated that they would only provide financial support for the PEG channels in the amount of 1%. Again, there was no further discussion or negotiation of this issue, as ANM never returned and never filed an application seeking a franchise.

## **Conclusions**

The response of AT&T in its Appendix C as they relate to the City of Birmingham is categorically false and not supported by the record. What the facts do establish is that local municipalities such as Birmingham and the BACB comply with the law, and are not a barrier to competitor’s entry into the market.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "Robert J. Borgon", is written over a horizontal line.

Robert J. Borgon  
Chairman  
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